

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINNIFRIED NOEL CHARLES,

Plaintiff,

- against -

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security, in
his official capacity, ENRICA TROY,
MARY ANN GANTNER, and the DEPARTMENT
OF HOMELAND SECURITY,

Defendants.

Index No.:
07Civ.8324
(JSR)(THK)

DEPOSITION of WINNIFRED CHARLES, taken by
Defendants at the offices of Michael P. Mangan,
L.L.C., 80 Wall Street, New York, New York 10005, on
Monday, April 14, 2008 commencing at 10:20 a.m.,
before I. Iris Cooper, a Certified Shorthand
(Stenotype) Reporter and Notary Public within and for
the State of New York.

A P P E A R A N C E S:

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BY: MICHAEL P. MANGAN, Esq., of Counsel

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BY: JOSEPH A. PANTOJA, Esq., of Counsel

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2 IT IS HEREBY STIPULATED AND
3 AGREED that the filing and sealing of
4 the within deposition be, and the
5 same are hereby waived;

6 IT IS FURTHER STIPULATED AND
7 AGREED that all objections, except as
8 to the form of the question, be and
9 the same are hereby reserved to the
10 time of the trial;

11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may
13 be sworn to before any Notary Public
14 with the same force and effect as if
15 sworn to before a Judge of this
16 Court;

17 IT IS FURTHER STIPULATED that
18 the transcript is to be certified by
19 the reporter.
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25

1 Charles

2 A Yes.

3 Q And what was your position there?

4 A Cashier.

5 Q And during what time period did
6 you have that?

7 A 1994 to 1998.

8 Q And what were the circumstances of
9 your ceasing employment with the Department of
10 Finance?

11 A I applied for another job, and
12 that job was the federal government.

13 Q And which part of the government
14 did you apply for?

15 A Excuse me?

16 Q Which part of the government did
17 you apply for?

18 A Immigration and Naturalization
19 Services.

20 Q And approximately when was that?

21 A When I applied?

22 Q Yes.

23 A It was somewhere in 1998. I can't
24 tell you the exact month.

25 Q When did you start working there?

1 Charles

2 A I started working there in October
3 of 1998.

4 Q Now, when you say INS, at that
5 time was it part of the United States Department
6 of Justice?

7 A Yes.

8 Q And which office did you start
9 working?

10 A I worked at Garden City,
11 Long Island.

12 Q And what position were you hired
13 in?

14 A I was hired as a district
15 adjudications officer.

16 Q Can we refer to that as a DAO?

17 A Yes.

18 Q What was your grade and step at
19 the time of hiring?

20 A At the time of hiring, I was a
21 grade five, but I was corrected to a grade seven
22 within weeks.

23 Q What was the promotion potential
24 for the DAO position when you started working as
25 a DAO?

Charles

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A It was like a specialty.

Q Now, when you transferred to New York in 2000, what were the circumstances of that? And by that, I mean what motivated you to do that or was it an involuntary transfer?

A It was not involuntary. My motivation was to be closer to home.

Q And where did you live at the time?

A I lived in Brooklyn at the time.

Q And when did you start working in New York City?

A It was in 2000. I can't give you the exact month.

Q When you say New York City, you mean 26 Federal Plaza?

A That is correct.

Q And when you transferred to 26 Federal Plaza, did your title remain the same?

A Yes.

Q Did your grade and step remain the same at the time of the transfer?

A Yes. I would say yes.

Q In other words, it was just a

1 Charles

2 time.

3 Q At least three years?

4 A At least three years.

5 Q So in other words, throughout the
6 entire time you were in N-600?

7 A Yes. I would say yes.

8 Q When you went to the 26 Federal
9 Plaza, the hierarchy that you mentioned before
10 that was at Garden City, SDAO, site manager,
11 section chief, and whatever comes after that,
12 that remained the same at 2600 Federal Plaza?

13 A Yes.

14 Q So who was the third line or
15 section chief while you were in N-600?

16 A That would be Rose Chapman.

17 Q And was she section chief the
18 whole time you were there?

19 A No. No.

20 Q Do you know when she was? Was she
21 there when you left the N-600 section?

22 A No.

23 Q Was she the section chief when you
24 left the N-600 section?

25 A Oh, yes. Yes.

1 Charles

2 Q Do you know who was there when you
3 started as section chief?

4 A When I started the N-600 section,
5 Rose Chapman.

6 Q And when you left the N-600
7 section, she was still the section chief?

8 A Yes.

9 Q So she was the only section chief
10 that you had while you were in the N-600
11 section?

12 A Yes.

13 Q Do you remember while you were in
14 the N-600 section who was the fourth-line
15 supervisor above Rose Chapman?

16 A I'm not 100 percent sure. It
17 might have been Gwen McPherson. But for that,
18 I'm not 100 percent sure.

19 Q Do you know the title that
20 Ms. McPherson would have had?

21 A No.

22 Q What about the fifth-line
23 supervisor, the person above Gwen McPherson, was
24 there someone above her while you were at N-600?

25 A I'm sure there was, but I'll be

1 Charles

2 Gwen McPherson outside of work?

3 A No.

4 Q Nina Crosby, while she was site
5 manager, which would include the N-600 time and
6 your time in the review section, what kind of
7 relationship did you have with her?

8 A Extremely cordial.

9 Q And did you spend any time with
10 her outside of work?

11 A No.

12 Q Did you have any issues with her
13 while you were in either the N-600 section or
14 the review section?

15 A No.

16 Q Now, in 2004 approximately, you
17 left the review section?

18 A Approximately, yes.

19 Q And what happened then?

20 A I was moved to another section.

21 Q Which section was that?

22 A The reverification section.

23 Q Now, before when you said
24 reverification and you changed it to review, is
25 this the review section or is it the

Charles

reverification?

A It's the reverification.

Q So this is the reverification?

A Yes.

Q Now, which floor was that on?

A Same, seventh floor.

Q And how long were you there?

A I would say at least a year and a
half, at least a year and a half.

Q Do you know when you left,
approximately, that section?

A 2005. 2005.

Q Do you know if it was the first
half or the second half?

A I can't remember exactly. I can't
remember exactly.

Q Was it toward the middle, you
think?

A Maybe towards the middle, but I'm
not 100 percent sure.

Q And your official title, pay, and
duties did not change when you were transferred
to the reverification section?

A That's correct.

1 Charles

2 Q Who was your first-line supervisor
3 when you joined the reverification section?

4 A I believe it was Enrica Troy.

5 Q She was SDAO?

6 A Yes.

7 Q Was she your first-line supervisor
8 the whole time you were there?

9 A Yes.

10 Q And who was the second line while
11 you were in the reverification section?

12 A Nina Crosby.

13 Q As site manager?

14 A Yes.

15 Q Was she your second line the whole
16 time you were there?

17 A I believe so, but she did leave at
18 one point. She did leave at one point.

19 Q Did someone replace her?

20 A Interchangeably, yes.

21 Q Who was that?

22 A It would be acting site manager,
23 Jimmy Ortega, and also acting site manager,
24 Enrica Troy.

25 Q And when Enrica Troy became the

Charles

acting site manager, did she remain SDAO or did she get someone to replace her as SDAO?

A She was not my first line the whole time back then because she was replaced for a short time by other supervisor, a new supervisor.

Q So in what time frame was she your first line?

A I think 2004 up until 2005, 2006. It changed because the new supervisor, she didn't stay very long.

Q But while you were in the reverification section, Enrica Troy would be the SDAO who was your SDAO for the longest period of time?

A Yes.

Q And she was your SDAO for most of the time that you were in reverification?

A Yes.

Q Now, while you were in reverification under Enrica Troy, what kind of relationship did you have with Enrica Troy?

A Just work relationship. Just a professional relationship.

1 Charles

2 Q And how long did you remain under
3 Ms. Troy?

4 A How long?

5 Q Yes.

6 A Interchangeably, I would say for
7 about three to four years.

8 Q And when you say interchangeably,
9 the periods during which she was not your
10 immediate supervisor was only while she was on
11 acting details?

12 A I would say, yes, or if I was in a
13 different section, but interchangeably for three
14 to four years.

15 Q From what dates was she your
16 first-line supervisor?

17 A I can't give you exact dates.

18 Q Approximately. Month, year, if
19 you know.

20 A Around 2000, late 2003, 2004 until
21 I left the service in 2006.

22 Q Now, you mentioned the issues that
23 you had with Ms. Troy while you were in the
24 reverification section.

25 A Yes.

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Charles

245, and the journeyman training after you were put on the calendar duty, which was after your reverification section time?

A Any other issues besides the detail and the journeyman training?

Q Yes.

A Just generally not being treated the same as other officers.

Q And while you were working under Ms. Troy until you left the employ of the government, your title, your pay, and your duties remained unchanged while you were under Ms. Troy?

A No. My pay didn't remain the same.

Q There were some changes in your grade and/or step?

A Yes.

(Notice of personnel actions
Bates stamped US 450, US 447, US
443, US 436, US 430, US 429,
US 428, US 415, and US 413 were
marked as Exhibit No. 1 for
identification on this date.)

Charles

Q Let me show you what's been marked as Exhibit No. 1. Just for the record, it's Bates stamped US 450. It includes documents Bates stamped US 450, US 447, US 443, US 436, US 430, US 429, US 428, US 415, and US 413.

If you could please look at what's been marked as Exhibit No. 1, it's a number of notice of personnel actions, which I'll refer to as NOPAs. Are you familiar with those documents why?

A Yes.

Q And are they your NOPAs?

A Yes.

Q Do you see the first NOPA US 450, it says there effective date of October 24, 1999. Is that when you were hired?

A No.

Q It says promotion. You were hired in 1998; right?

A That's correct.

Q And I think you testified that you were hired as a grade five and they corrected it to a grade seven shortly thereafter?

A Yes.

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Charles

Q And this NOPA, Page No. US 450,
the nature of the action in Item No. 5B, it says
promotion. Do you see that?

A Yes.

Q Is this NOPA accurate in
identifying that you were promoted from a grade
seven to a grade nine on October 24, 1999?

A Yes.

Q And the next page, US 447 in
Section 5B, it refers to another promotion?

A Yes.

Q And on October 22, 2000, you were
promoted from a grade nine to a grade 11?

A Yes.

Q That was about a year later;
right?

A Yes.

Q Was October 2000 the earliest date
in which you would have been eligible for a
promotion from a grade nine to a grade 11?

A Repeat the question.

Q Was October 2000, was that the
earliest date on which you would have been
eligible for a promotion from a grade nine to

Charles

grade 11?

A Yes.

Q If you turn to the next page, this is a NOPA with an effective date of October 21, 2001. It also refers to a promotion. Do you see that?

A Yes.

Q Were you promoted from a grade 11 to a grade 12?

A Yes.

Q Effective October 21, 2001?

A Yes.

Q And was that promotion October of 2001 the earliest date on which you would have been eligible for a promotion from grade 11 to grade 12?

A Yes.

Q And since being promoted to grade 12 on October 21, 2001, after that date, you received step increases from time to time?

A Yes.

Q If you can turn to Page No. 436, that's a NOPA effective October 20, 2002?

A Yes.

Charles

Q The nature of action in item 5B as described as a thin grade increase, do you see that?

A Yes.

Q You went from a 12 step one to a 12 step two?

A Yes.

Q Was October 20, 2002 the earliest date in which you could have received a step increase?

A Yes.

Q Now, as far as you know, after grade 12 step two, did you receive additional step increases?

A Yes.

Q And as far as you know sitting here today, on each time that you received a step increase, was it on the earliest date on which you could have received a step increase?

A Yes.

Q What was your final grade and step when you left the service?

A Grade 12, step four.

Q And if you could turn to Page No.

1 Charles

2 US 430, it has an effective date of March 8,
3 2003. It's entitled termination of appointment.
4 What's going on here? You didn't tell me your
5 appointment was terminated.

6 A I believe this might have been
7 when the agency changed names.

8 Q I see. And if you look at the
9 next NOPA on Page No. 429, it's dated March 9,
10 2003, the next day?

11 A Yes.

12 Q And the nature of action refers to
13 mass transfer?

14 A Yes.

15 Q And the US 430, the prior NOPA,
16 the employing department or agency was the
17 U.S. Department of Justice, INS?

18 A Where do you see that?

19 Q At the bottom of US 430.

20 A Yes.

21 Q And the next notebook, the
22 employing department changed to Homeland
23 Security?

24 A Yes.

25 Q So that was just a termination so

1 Charles

2 that you could be hired by the new agency
3 created by the creation of the Department of
4 Homeland Security?

5 A Yes.

6 Q And after the creation of the
7 Department of Homeland Security, you worked for
8 DHS Immigration and Customs Enforcement?

9 A DHS -- CIS.

10 Q Just as a technical matter, do you
11 see Box No. 22 on US 429, name location of
12 positions, organization. It says Immigration
13 and Customs Enforcement; do you see that?
14 That's ICE; do you see that?

15 A Where do you see that?

16 Q US 429, the mass transfer?

17 A 429?

18 Q Yes. Do you have 429?

19 A Yes.

20 Q You mentioned CIS. What is CIS?

21 A Citizen and Immigration Services.

22 Q Was that a part of ICE?

23 A No. No.

24 Q What was ICE, relative to --

25 A ICE is a different branch.

Charles

Q Is it possible that when you just started after the mass transfer that technically you were part of ICE?

A It's possible.

Q It says in Item No. 45 on Page No. 429, is it says that INS employees were being transferred to the borough of Immigrations and Customs Enforcement. Do you see that?

A Yes.

Q That's ICE; correct?

A Yes.

Q And it makes reference to a transition, so perhaps that was just during the transition?

A It and says temporarily also.

Q And now we go to 428, a NOPA effective October 19, 2003. It's a thin grade increase. This time, the employing organization in Box No. 22 is CIS?

A Right.

Q Now, on Page No. 415, US 415, the NOPA effective September 6, 2006, it refers in Item No. 5B to a resignation?

A Yes.

Charles

September 6, 2006.

Q And any other corrections that you know that stand out?

A No.

Q We'll refer to this as the amended complaint going forward. Now, looking at Paragraph No. 14 of the complaint, it says that you worked at the DHS as a DAO until September 7, 2006. And you just indicated that it should read September 6, 2006.

And it continues when you, open quotes, took a leave of absence for an internship with the New York state unified court system, closed quote. Do you see that?

A Yes.

Q Am I correct that there's a misstatement there with respect to leave of absence. You resigned, right, on September 6, 2006?

A I resigned effective September 6, 2006.

Q So where it says leave of absence, it should say resigned?

A Yes.

1 Charles

2 Q And the internship, the six-month
3 leave of absence that you wanted in connection
4 with the internship that you testified to
5 earlier, it was an internship with the New York
6 state unified court system?

7 A Yes.

8 Q Now, if you turn to Paragraph No.
9 18 of the complaint, it refers to a vacancy
10 announcement that you applied for in May of
11 2005. Do you see that?

12 A Yes.

13 Q And it was for a supervisory
14 district adjudication officer position; right?

15 A Yes.

16 Q And that's referenced in Paragraph
17 No. 18; correct?

18 A Yes.

19 Q Now, do you know which specific
20 vacancy announcement you're referring to in that
21 paragraph?

22 A Do you mean a specific number?

23 Q Yes.

24 A Yes.

25 Q Which number was that?

1 Charles

2 A I didn't memorize the number.

3 Q Does FS-330054 sound right?

4 A It sounds familiar.

5 Q Who were the selecting officials
6 for that vacancy announcement?

7 A Who were the selection officials?

8 Q Yes. Do you know who the
9 selecting officials were for that particular
10 one?

11 A No.

12 Q Do you know which in which office
13 the vacancies existed that were notified by the
14 May 2005 vacancy announcement?

15 A No.

16 Q For example, would they have been
17 in the New York district office?

18 A Yes.

19 Q Do you know which section?

20 A No.

21 Q Do you know how many vacancies
22 were involved in the May 2005 vacancy
23 announcement that you refer to in Paragraph No.
24 18?

25 A From my recollection, few or

1 Charles

2 several or various.

3 Q Do you know whether any selections
4 were, in fact, made pursuant to the vacancy
5 announcement referenced in Paragraph No. 18, the
6 May 2005 vacancy announcement?

7 A I have no information that
8 selections were made besides an e-mail back and
9 forth to the Vermont human resources that said
10 selections were made and selectees were
11 notified.

12 Q Do you have a copy of that e-mail?

13 A I do.

14 Q For the record, I have not seen
15 that. Could you please provide a copy of that
16 e-mail to your attorney for production?

17 A Sure.

18 MR. MANGAN: I'm not sure --
19 we may have produced that. I'm not
20 certain. But if I get it --

21 MR. PANTOJA: Just so I
22 know, if you could look at the stack
23 that I just gave you earlier,
24 Mr. Mangan, I Bates stamped what you
25 produced. I bates stamped the

Charles

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A No.

Q Now, Paragraph No. 21 of the
complaint, it refers to openings announced in
November 2005. Do you see that?

A Yes.

Q Is that referring to one vacancy
announcement?

A Yes.

Q Do you remember the vacancy
announcement?

A Yes.

Q What member was it?

A I believe it was 101446. I might
be off by a digit.

Q Does a CIS-101146-NYC sound right?

A Sounds right.

Q We can refer to that as the 101146
vacancy?

A Okay.

(Vacancy announcements Bates
stamped US 298 through US 304 was
marked as Exhibit No. 3 for
identification on this date.)

Q I would like to show you what's

1 Charles

2 been marked as Exhibit No. 3. Exhibit No. 3 is
3 Bates stamped US 298 through US 304. Are you
4 familiar with that document?

5 A Yes.

6 Q Now, is that the vacancy
7 announcement that you're referring to in
8 Paragraph No. 21 of the amended complaint?

9 A Yes, without the changes.

10 Q You're referring to Paragraph No.
11 3 has some handwritten dates over the open
12 period section in the middle of the page?

13 A Yes.

14 Q Do you have an understanding as to
15 what the open period was?

16 A The understanding I have is what
17 is here in print from November 7th to
18 November 14th of 2005.

19 Q But you don't know whether it was
20 changed thereafter?

21 A I'm not sure.

22 Q Now, what was the position
23 advertised in Exhibit No. 3?

24 A For supervisory adjudication.

25 Q Now, how many positions were

Charles

Q Now, Paragraph No. 22 of the complaint, amended complaint is Exhibit No. 2 says that in January 2006, you learned that you had been denied a promotion. Are you referring to announcement 101146?

A Yes.

(Non-selection letter Bates stamped US 336 was marked as Exhibit No. 5 for identification on this date.)

Q I would like to show you the what's been marked as Exhibit No. 5 Bates stamped US 336. Are you familiar with that document?

A Yes.

Q What is that?

A That is the non-selection letter from Vermont.

Q In connection with announcement 101146?

A Yes.

Q Did you receive Exhibit No. 5 on or about the date of that document, January 9, 2006?

1 Charles

2 A Yes.

3 Q How did you receive it?

4 A By U.S. postal mail.

5 Q Now, while your application was
6 pending to announcement 101146 and prior to
7 receiving the non-selection letter that is
8 Exhibit No. 5, had you made any inquiry
9 concerning that announcement 101146?

10 A I don't believe so, no.

11 Q So as of January 9, 2006, which is
12 the date of Exhibit No. 5, you had not made any
13 inquiry, either verbal or written, within the
14 agency itself?

15 A Clarification, it's possible that
16 I had gotten the same non-selection letter, but
17 by e-mail. And that might have been before I
18 got this actual letter. So I pointed in that
19 e-mail I might have did an inquiry.

20 Q And approximately when was that
21 e-mail?

22 A December of 2005.

23 Q And who sent that e-mail; do you
24 know?

25 A The Vermont human resources

Charles

bulletin.

Q And what did the e-mail say?

A It would typically say that you were considered but not selected.

Q And after receiving that December 2005 e-mail in connection with the announcement 101146, did you make any inquiry as to the non-selection that you were advised of in December of 2005?

A Yes.

Q What did you do?

A I did a FOYA request.

Q When did you do that FOYA?

A That would have been in and around December of 2005.

Q Aside from the FOYA request, did you make any inquiry within the agency, putting aside FOYA avenue, did you make any inquiry as to your non-selection for 101146?

A No.

Q And do you have a copy of your December 2005 FOYA request?

A I believe so.

Q I don't have a copy of that. If

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Charles

learn indirectly or directly who the selectees
were for the vacancy announcement?

A No.

Q Was there any talk in the office
from the other DAOs that they had been selected
or any indication that someone had been
selected?

A No.

Q Did there come a time when you
learned who the selectee were for the 101146
vacancy?

A Yes.

Q When did you learn who the
selectees were? I don't mean officially from
the agency, just in general, either indirectly
or directly when did you learned who the
selectees were?

A I learned in May of 2006 when I
got my response to my FOYA.

Q Who were the selectees?

A There were Monica Turo under merit
eligible list and Nancy Feria from the
non-traditional list.

Q Now, do you know whether vacancy

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Charles

announcements under the 101146, were they all
done at once or were there multiple stages? In
other words, was there a first round selection
or are you aware of any additional rounds of
selection under that same vacancy?

A No.

Q Are you aware of any additional
selectees under 101146 other than Ms. Feria and
Ms. Turo?

A I am now, yes.

Q Who else do you understand was
selected for that announcement?

A Terry Williams.

Q Do you know whether she was
selected off of a particular list?

A I only know off of 101146 because
of discovery that she was chosen from that list.

Q Now, did you know Nancy Feria
prior to May 2006?

A Yes.

Q And how do you know her?

A She used to work in the Nat
section.

Q What time frame are you talking

Charles

agency outside of the FOYA context in connection
with the vacancy announcement 101146?

A No.

(Job announcement for
supervisory adjudication officer
Bates stamped US 81 through US 87
was marked as Exhibit No. 7 for
identification on this date.)

Q Let me just show you what's been
marked as Exhibit No. 7 Bates stamped US 81
through US 87. Are you familiar with this
document.

A Yes.

Q What is this document?

A This is a job announcement for
supervisory adjudication officer.

Q What was the open period for this?

A January 9 to January 23.

Q 2006?

A 2006. Sorry.

Q Did you apply to this vacancy
announcement?

A Yes, I did.

Q Do you have an understanding as to

Charles

1
2 which section the vacancy was located in?

3 A No.

4 Q Do you know who the selecting
5 officials were for this particular announcement?

6 A No.

7 Q I can refer to this announcement
8 as 103847; right?

9 A Yes.

10 Q Do you know who was selected for
11 this announcement?

12 A I learned that from discovery.

13 Q And who was that?

14 A Coldin Alman.

15 Q Do you know how he was selected,
16 like was it off of a list or not?

17 A From discovery, yes.

18 Q How was he selected?

19 A Off a list.

20 Q What type of a list?

21 A The merit eligible list.

22 Q It was a traditional list?

23 A Merit eligible.

24 Q In other words, it wasn't a
25 non-traditional list?

1 Charles

2 A Yes.

3 Q Do you have a copy of it?

4 A I would have to check my records.

5 Q If you can please check, and if
6 you do, provide a copy to counsel so it can be
7 produced in this case?

8 A Sure.

9 Q Aside from what's in front of you
10 now, Exhibit No. 8 and the responses to the
11 questions as part of the narrative report that
12 we were just talking about, were there any other
13 documents that you submitted in connection with
14 your application for 103847?

15 A I believe that was it.

16 Q Now, did there come a time that
17 you learned that you were not selected for the
18 announcement 103847?

19 A Yes.

20 Q Approximately when was that?

21 A Approximately January of 2006.

22 (Non-selection letter for
23 vacancy announcement 103847 Bates
24 stamped US 43 was marked as Exhibit
25 No. 9 for identification on this

Charles

date.)

Q Let me show you that's been marked
as Exhibit No. 9. It's Bates stamped US 43.
Are you familiar with this document?

A Yes.

Q And what is it?

A This is the non-selection letter
for vacancy announcement 103847.

Q Now, did you did you receive this
document on or about the date indicated on top,
February 21, 2006?

A Yes.

Q And prior to receiving this
document, had you been notified of your
non-selection for vacancy announcement 103847?

A Yes.

Q In what way were you notified?

A I was notified by e-mail.

Q Approximately what date was that?

A Approximately January 2006. I
can't give you the exact date.

Q Do you have a copy of that e-mail?

A Yes.

Q Could you please provide a copy to

Charles

identification on this date.)

Q I'm going to show you what's been marked as Exhibit No. 10. This, again, is I document that was produced by your counsel. It's as I received it stapled, except I added Bates stamp numbers. This is US 500 through US 516. Are you familiar with this document?

A Yes.

Q And what is this?

A This is the response to my FOYA request and referenced the vacancy 101146.

Q And this is the FOYA request that you made in December of 2005?

A Yes.

(Documents Bates stamped US 554 through US 568 was marked as Exhibit No. 11 for identification on this date.)

Q I would like to show you what's been marked as Exhibit No. 11, also from your production in this case. It's Bates stamped US 554 through 568. But before I get to that, I just want to make clear US 500 through US 516, which is Exhibit No. 10, that is the CIS's

1 Charles

2 response to your FOYA request of December 2005
3 with respect to announcement 101146; right?

4 A Yes.

5 Q And they made that response on
6 May 30, 2006?

7 A Yes.

8 Q With respect to that vacancy
9 announcement, 101146, did CIS provide further
10 information after this with respect to that FOYA
11 request?

12 A In respect to that FOYA, no.

13 Q And is this a complete set of what
14 you received from the CIS in response to your
15 FOYA request on or about May 30, 2006? In other
16 words, is this the May 30, 2006 letter with the
17 attachments that you received on or about that
18 day?

19 A Yes.

20 Q And if I could show you what's
21 been marked a Exhibit No. 11, are US 554 through
22 568. Are you familiar with this document?

23 A This is a combination of different
24 documents.

25 Q What is Exhibit No. 11?

1 Charles

2 A First, the first page is --

3 Q I guess for now what I'm wondering
4 is, is this something as it is stapled or was
5 this stapled without any apparent reason? Was
6 this stapled together for a reason?

7 A I have no idea. I didn't staple
8 it.

9 Q The first page is a June 26, 2006
10 letter from you to US Customs and Border
11 Protection in Vermont; right?

12 A Yes.

13 Q And you were following up on your
14 FOYA request with respect to announcement
15 101146?

16 A Yes.

17 Q Now, is this your follow-up to the
18 Exhibit No. 10 document that we just looked at?

19 A Yes.

20 Q So about a month later you
21 followed up on that FOYA response?

22 A Yes.

23 Q Between May 30, and June 26, 2006,
24 was there any other communication that you had
25 with the FOYA office in connection with your

1 Charles

2 request about 101146?

3 A No.

4 Q Now, this document, Exhibit No.

5 11, is a bunch of pages US 554 through 568.

6 When you sent in your June 26, 2006 letter to

7 FOYA, did it have any attachments or was it just

8 the letter?

9 A It was just the letter.

10 Q Just the letter?

11 A Yes.

12 Q So do you sitting here today have

13 any understanding why this might have been

14 stapled and produced to me?

15 A No.

16 Q Looking at the next page of

17 Exhibit No. 11 dated September 7, 2006; do you

18 see that?

19 A Yes.

20 Q And it's from the United States

21 Customs and Border Protection to you regarding

22 File No. BSC 200600165. It says that it relates

23 to vacancy IDs FS-330054, 101146, and 103847.

24 Do you see that?

25 A Yes.

Charles

No. 24 for identification on this date.)

Q Let me show you what's been marked as Exhibit No. 24. It's Bates stamped US 356 through US 362. This purports to be a supervisory adjudications officer GS-1801-13 position description. Are you familiar with this document?

A Obviously through discovery.

Q Have you prior to today come across what you understood to be a position description for the SDAO position?

A Only what I saw in the announcements, in the vacancy announcements.

Q Now, the SDAO supervisory adjudication officer position referenced in this document Exhibit No. 24, that's the same thing as DAO that we've been talking about; right?

A That's correct.

Q Did there come a time that the name became shorter?

A Yes.

Q When was that, approximately?

A Approximately 2006.

Charles

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Q But it's the same position?

A It is the same position, in my understanding.

Q Same duties?

A I believe so, yes.

Q Same pay scale?

A Yes.

Q Are you aware of any other document, other than the vacancy announcements that we looked at and this document, Exhibit No. 24, which purports to identify the duties of a supervisory adjudication officer?

A There might be, but I'm not really aware of any.

Q Now, with respect to the supervisory adjudications officer position, is it your understanding that the eligibility requirements for that position would be the same that we've been talking about all day today with respect to the SDAO position?

A That is my understanding, yes.

Q Now, during 2006, did you take any leave, sick, annual, or leave without pay or any other type of leave of more than one consecutive

Charles

Q And the announcements 103847 and
101146?

A Correct.

Q And when you sought EEO counseling
with respect to your application to those
announcements, did you seek EEO counseling once
in connection with all the announcements?

A Yes.

Q And when was it that you sought
EEO counseling with respect to those
announcements.

A In June of 2006.

(Report of EEO counseling
claim, Bates stamped US 5 through US
26 was marked as Exhibit No. 25 for
identification on this date.)

Q Let me show you what's been marked
as Exhibit No. 25. It's Bates stamped US 5
through US 26. Are you familiar with that
document?

A Yes.

Q What is it?

A This is a report of my EEO claim
in relation to non-selection for the three

Charles

supervisory announcements.

Q And who was your EEO counselor?

A Ramona S. Hill. She was a coordinator.

Q Did you deal with her?

A Initially.

Q You spoke to her on the phone?

A I might have, yes, on the phone.

Q Now, how did Ramona Hill handle your case? As far as you know, did she treat you fairly during the EEO counseling process?

A I believe so. She did mostly administrative things.

Q Now, the initial contacts on Page No. US 6 of Exhibit No. 25, at the top it mentions June 26, 2006. Does that sound right as the date on which you made your EEO contact?

A It sounds right.

Q Now, do you remember what you discussed with her during your the EEO counseling phase?

A That's --

Q Just specifically what you discussed with her?

Charles

understand it. Does this Paragraph No. 2 summarize accurately the discussions that you had with the EEO counselor during the counseling phase of the this EEO complaint?

A Summarization, yes.

Q And you discussed with the EEO counselor only the national origin claim with respect to Mary Ann Gantner in connection with the FS 330054 announcement, the 101146 announcement, and the 103847 announcement; correct?

A Yes, at that time, I might have just discussed national origin.

Q There were no other vacancy announcements that you discussed during that EEO counseling; correct?

A I only discussed what I put in for.

Q And are those the three that you put in for?

A Yes.

Q US 6 references on Item No. 11 on Page No. US 6 on the bottom, it references a notice of final interview being mailed to you

1 Charles

2 Q In 2005, did you receive EEO
3 training?

4 A I might have. It might have been
5 a yearly thing.

6 Q And in 2005, was it a
7 computer-based training?

8 A Yes.

9 Q The 2005 training, did it go over
10 the mechanism for commencing any EEO action?

11 A It might have.

12 Q Did it mention manner of starting
13 an EEO process through EEO counseling?

14 A Yes.

15 Q Did it mention the time limit for
16 filing a formal administrative complaint after
17 being told by the EEO that you could file a
18 formal administrative complaint?

19 A I can't remember specifically if
20 it did.

21 Q Did it mention that you could
22 continue the administrative process even if the
23 counseling phase is unsuccessful?

24 A It might have, but I really can't
25 tell you, yes, it did. I can't remember.

Charles

A Her role was that of selecting official.

Q And what was her role in connection with the announcement 103847?

A Her role was as selecting official.

Q Do you know whether she, in fact, made selections under 103847?

A Yes, I do.

Q And who was that?

A The selection was Coldin Alman.

Q And with respect to 101146 do you know, in fact, whether she made selections under that?

A Yes, I do.

Q And what were the selections?

A Her selections were Monica Turo and Terry Williams, off that merit list, even though the sheet that we got in discovery didn't have selectee next to it, Terry Williams. S meaning selection for Nancy Feria on the non-traditional list.

Q Now, what exactly is the misconduct you're alleging on the part of

1 Charles

2 Ms. McPherson in connection with the vacancy
3 announcements?

4 A The misconduct that I'm alleging
5 is that she's in a position to ensure that
6 misconduct does not happen with her subordinates
7 in recommending supervisors.

8 Q And are you aware of any specific
9 instance in connection with the applications
10 that you made, are you aware of any specific
11 instance in which she failed to act on
12 information that indicated improper conduct by a
13 recommending official?

14 MR. MANGAN: Objection.
15 Form.

16 THE WITNESS: I am not
17 specifically aware of any instance.

18 Q Now, Mary Ann Gantner, what role
19 are you alleging that she had in connection with
20 the announcement FS 330054?

21 A As district director at the time,
22 it was her role to make sure that her
23 subordinates do not use any type of practice
24 that's disallowed in choosing supervision or
25 supervisors.

1 Charles

2 Q Was she a selecting official for
3 that vacancy announcement FS 330054?

4 A Who was?

5 Q Mary Ann Gantner?

6 A I would not know. I have no idea.

7 Q Was she a selecting official for
8 any of the vacancy announcements?

9 A No, she was not because she was a
10 district director.

11 Q So with respect to these three
12 vacancy announcements FS 330054, 101146, and
13 103847, as far as you understand she was not the
14 selecting official for those announcements?

15 A She was not a selecting official,
16 but she had a duty to make sure her subordinates
17 acted within the law.

18 Q Are you aware of any information
19 indicating that Ms. McPherson was aware of any
20 specific misconduct in connection with your
21 applications to vacancy announcements FS 330054,
22 101146, and 103847?

23 A I'm not aware of any specific
24 instance.

25 Q Did you ever meet Ms. Gantner?

1 Charles

2 A Not officially but around the
3 office around 26 Federal.

4 Q Did you actually meet her or are
5 you saying you were in the same room on
6 occasion?

7 A In the same room on occasion, meet
8 in the hallway.

9 Q Did you actually ever meet her, in
10 other words, address her and she addressed you,
11 that kind of thing?

12 A No.

13 Q Had you ever worked with her?

14 A No.

15 Q Has she ever supervised your work?

16 A No.

17 Q Have you ever had any issues with
18 respect to Ms. Mary Ann Gantner? Other than
19 your mentioning her in connection with these
20 vacancy announcements, has there ever been an
21 issue that you had with Ms. Mary Ann Gantner?

22 A No issue to speak of. No negative
23 issue.

24 Q With respect to Ms. Enrica Turo,
25 in all the time that you've known her, has she

1 Charles

2 ever made a comment to you about your race?

3 A Any comments to me, no.

4 Q Has Ms. Troy ever in all the time
5 that you've known her ever made a comment to you
6 about your national origin?

7 A To me, no.

8 Q Did you ever hear Ms. Troy say
9 anything about the race of any other employee
10 employed by the federal government?

11 A I can't give you a specific
12 instance, no.

13 Q Did Ms. Troy ever say anything
14 about the national origin about any other
15 employee in DHS that you considered offensive?

16 A She has never said anything to me
17 in talking about someone else's race that I can
18 remember.

19 Q Are you aware of any employee
20 having ever attributed to Ms. Troy a comment
21 that you found offensive to your race?

22 A Comments, no. Action, maybe.

23 Q Has any employee at the agency as
24 far as you know ever attributed to Ms. Troy a
25 comment that you found offensive to your nation

Charles

origin?

A Any other employee?

Q Yes.

A Not that I can remember right now,
no.

Q Has Gwen McPherson ever made a
comment to you about your race?

A No.

Q Has she ever made a comment to you
about your national origin?

A No.

Q Has she ever made a comment about
the race of any other federal employee?

A No.

Q Has she ever made a comment about
the national origin of any other federal
employee?

A No.

Q Has any employee, any federal
employee, ever attributed to Ms. McPherson a
comment that you found objectionable to your
race, offensive to your race?

A No.

Q Has any employee ever attributed

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Charles

to Ms. McPherson a comment that you found
offensive to your national origin?

A No.

Q Has Mary Ann Gantner -- I
understand she's deceased. Has Mary Ann Gantner
ever made a comment to you about your race?

A No. She barely spoke.

Q Has Mary Ann Gantner ever made a
comment to you about your national origin?

A No.

Q Has Mary Ann Gantner ever made a
comment about the race of any other federal
employee?

A No.

MR. MANGAN: Object. Hold
on a second.

(Whereupon, a brief
conversation was held off the
record.)

Q Has Mary Ann Gantner ever as far
as you know made a comment about the national
origin of any other federal employee?

A As far as I know, no.

Q Has any employee, any federal

1 Charles

2 employee, ever attributed to Mary Ann Gantner a
3 comment that you found offensive to your race?

4 A As far as I remember, no.

5 Q Has any federal employee ever
6 attributed to Gantner, Mary Ann Gantner, a
7 comment that you found offensive to your
8 national origin?

9 A Not to my knowledge, no.

10 Q Now, we spoke earlier about
11 John Ryan?

12 A Yes.

13 Q Who appears to have been a section
14 chief in December of 2005 for adjudications two.
15 Has John Ryan ever made a comment to you about
16 your race?

17 A No.

18 Q Has John Ryan ever made a comment
19 to you about your national origin?

20 A No.

21 Q Has John Ryan ever made a comment
22 about the race of any other federal employee?

23 A As far as I know, no.

24 Q Has John Ryan ever made a comment
25 about the national origin of any other federal

1 Charles

2 employee?

3 A I wouldn't know.

4 Q Has any employee ever attributed
5 to John Ryan a comment that you found offensive
6 to your race?

7 A No.

8 Q Has any employee ever attributed
9 to John Ryan a comment that you found offensive
10 to your national origin?

11 A As far as I remember, no.

12 Q Sham Chin-Gee, can I refer to her
13 as Ms. Gee?

14 A Ms. Gee.

15 Q If I can refer to her as Ms. Gee?

16 A Yes.

17 Q Thank you. Ms. Gee, has she ever
18 made a comment to you about your race?

19 A No.

20 Q Has she ever made a comment to you
21 about your national origin?

22 A No.

23 Q Has Ms. Gee ever made a comment to
24 you about any other federal employees' race?

25 A Not that I remember.

1 Charles

2 Q Has Ms. Gee ever made a comment
3 about any other federal employees national
4 origin?

5 A I don't know.

6 Q Has anyone ever attributed to
7 Ms. Gee a comment about a federal employee that
8 you found offensive to your race?

9 A No.

10 Q Has anyone ever attributed to
11 Ms. Gee a comment that you found offensive to
12 your national origin?

13 A No.

14 Q I know who Rocky M. is now.
15 Remember Rocky M., we didn't know who that was?
16 Rocky Maier, are you familiar with that name?

17 A No.

18 Q A human resources specialist that
19 might have worked with Mr. Brouillet?

20 A I don't know.

21 Q You never dealt with Rocky Maier?

22 A Never.

23 Q Steven Rosina, do you know who I'm
24 referring to?

25 A Yes.

Charles

Q Has Mr. Rosina ever made a comment
to you about your race?

A No.

Q His Mr. Rosina ever made a comment
to you about your national origin?

A No.

Q Has Mr. Rosina ever made a comment
about any other employees race that you found
offensive?

A No.

Q Has Mr. Rosina ever made a comment
about any other federal employees national
origin that you found offensive?

A No.

Q Has anyone ever attributed to
Mr. Rosina a comment that you found offensive to
your national origin?

A No.

Q Has anyone ever attributed to
Mr. Rosina a comment that you found offensive to
your race?

A No.

Q Now, we've gone over a few names.
We've gone over the names of Enrica Troy,

1 Charles

2 Gwen McPherson, Mary Ann Gantner, Steven Rosina,
3 and John Ryan. Is there anyone else that you
4 know of that might have been involved in the
5 selection process, either recommending or
6 selecting for the vacancies that you applied for
7 that are at issue in this case, the three
8 vacancy announcements?

9 A Yes. Dennis Bunce might have been
10 involved.

11 Q Mr. Bunce, Dennis Bunce, has he
12 ever made a comment to you about your race?

13 A Not that I can remember, no.

14 Q Has he ever made a comment to you
15 about your national origin?

16 A No.

17 Q Has Mr. Bunce, has he ever made a
18 comment about anyone's race that you found
19 offensive?

20 A No.

21 Q Has he ever made a comment about
22 anyone's national origin that you found
23 offensive?

24 A No.

25 Q Has anyone ever attributed to him

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Charles

a comment that you found offensive to your race?

A Not that I remember.

Q Has anyone ever attributed to him
a comment that you found offensive to your
national origin?

A Could you repeat that.

Q Has anyone ever attributed to
Mr. Bunce a comment that you found offensive to
your national origin?

A That I can remember right now, no.

Q Now, with respect to all the
people that we've been talking about in the last
few minutes, I was referring to comments about
federal employees. With respect to
Gwen McPherson, Mary Ann Gantner, Enrica Troy,
John Ryan, Steven Rosina, Dennis Bunce, have any
one of them as far as you know ever made a
comment about anyone that was offensive to your
race?

A Not that I remember right now, no.

Q And all those individuals just
identified in the prior question, did any one of
them as far as you know ever make a comment
about anyone that you found offensive to your

Charles

national origin?

A Not that I can remember right now,
no.

Q Did there come a time when the
agency adjudicated your EEO complaint?

A Yes.

Q And what was your disposition?

A There was no resolution.

Q Do you recall whether the agency
denied your EEO complaint?

A I don't know if they denied it.

(Document Bates stamped US
27 through US 35 was marked as
Exhibit No. 27 for identification on
this date.)

Q Let me show you what's been marked
as Exhibit No. 27, Bates stamped US 27 through
US 35. Are you familiar with this document?

A Yes.

Q And what is this document?

A This is in response to my formal
complaint.

Q And do you see the first sentence
on the first page as 27, it says, open quotes,

Charles

date.)

Q Let me show you what's been marked as Exhibit No. 30. Are you familiar with this document?

A Yes.

Q And what does this document?

A This is the denial of my request for reconsideration.

Q And this is US 40 through US 42; right?

A Yes.

Q On the last Page No. US 42, it indicates a date of June 19, 2007. Did you receive this document on or about June 19, 2007?

A Yes.

Q And when you received this document, did you read the entire document?

A Yes.

Q Did you read the section entitled complainant's right to file a civil action?

A Yes, I did.

Q It's stamped US 40 through US 41; correct?

A Yes.

1 Charles

2 Q And back in or about June 19, 2007
3 when you received this document, what did you
4 understand to be your rights to further review?

5 A I understood it to be that I had
6 90 days from the time I received notice, 90
7 calendar days to days to file a civil action.

8 Q Your original complaint in this
9 case was filed sometime in the fall of --
10 September of 2007 to try to meet that
11 requirement?

12 A To meet that requirement, yes.

13 Q And do you happen to know exactly
14 when you received this June 19, 2007 document?

15 A I don't know the exact date.

16 Q But it was on or about June 19,
17 2007?

18 A It was at least five days, within
19 five days of June 19th.

20 Q Somewhere down here is Exhibit No.
21 2. Now, you see Paragraph No. 13 basically said
22 what you just said. Paragraph No. 13 starts
23 with plaintiff sought a mediation through the
24 EEOC, which did not resolve her dispute.

25 The mediation you were referring

1 Charles

2 A If I'm making a FOYA claim?

3 Q In this lawsuit, are you asserting
4 a claim under FOYA?

5 A As far as I know, I don't think I
6 am.

7 Q Assuming that you had made a FOYA
8 claim in light of discovery and the documents
9 that we have, is that now moot? During the
10 course of discovery, have you received documents
11 in connection with the vacancy announcements?

12 A Not all the time, no. Not all the
13 time. Looking at my amended complaint, I can
14 see that -- you know, I went through this really
15 quickly this morning. So, yes, to clarify the
16 record, I am seeking out my claim based on the
17 FOYA because not all of my FOYA were not
18 responded to.

19 Q Which ones were not responded to?

20 A The first two that I made.

21 Q Do you mean FS 330054?

22 A That's correct.

23 Q In connection with the 10146, is
24 it your position that you received your FOYA
25 request with respect to that?

1 Charles

2 A I made one FOYA request. I did
3 receive it about six months later.

4 Q You don't have a FOYA C with
5 respect to the 101146 announcement?

6 A Excuse me?

7 Q Your FOYA claim in this lawsuit
8 does not extend to your FOYA request in your
9 101146 announcement?

10 A It might because if the claim was
11 untimely under 101146, then I would have a claim
12 against that.

13 Q Is it your understanding that one
14 has a claim for whether or not something was
15 timely or is it whether or not they received
16 information that they asked for?

17 A It can be both, is my
18 understanding.

19 Q Let me step back here. What is
20 your understanding about what is available to
21 you under FOYA with respect to 101146?

22 A I would have to get guidance from
23 my counsel on that.

24 Q I guess my understanding is that
25 if you got the documents, it's moot. That's why

1 Charles

2 I'm wondering, did you get the documents for
3 your FOYA request 101146. Whether or not you
4 think you have relief available, did you get
5 your response to that FOYA request?

6 A I got the response about six
7 months after I made the request.

8 Q And as of today, you got your
9 response?

10 A Yes, I did.

11 Q And with respect to 103847, did
12 you make a FOYA request?

13 A Not that I can remember.

14 Q The only FOYA request for which
15 you have not received a response is the FOYA
16 request relating to the vacancy announcement
17 330054?

18 A I made two FOYA requests for that
19 announcement, and they were both not answered.

20 Q After you made those requests, and
21 just for the record, I noted earlier I hadn't
22 received any copies of those requests. But
23 after you made those two requests that you're
24 referring to in regard to FS 330054, did you
25 ever correspond further with CIS in connection